

IC 16-42-20

Chapter 20. Drugs: Enforcement of Pharmacy Laws and Rules

IC 16-42-20-1

Powers of enforcement officers

Sec. 1. (a) Each member of the Indiana board of pharmacy, designated employees of the Indiana board of pharmacy, and all law enforcement officers of Indiana are primarily responsible for the enforcement of all statutes and rules of Indiana relating to controlled substances. However, the Indiana board of pharmacy is primarily responsible for making accountability audits of the supply and inventory of controlled substances.

(b) An officer or employee of the Indiana board of pharmacy designated by the board may do any of the following:

- (1) Carry firearms in the performance of the officer's or employee's official duties.
- (2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.
- (3) Make arrests without warrant for any offense relating to controlled substances committed in the officer's or employee's presence or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing a felony relating to controlled substances.
- (4) Make seizures of property under this chapter.
- (5) Perform other law enforcement duties that the Indiana board of pharmacy designates.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-2

"Controlled premises" defined; administrative inspections and warrants

Sec. 2. (a) As used in this section, "controlled premises" means the following:

- (1) Places where persons registered or exempted from registration requirements under IC 35-48-3 are required to keep records.
- (2) Places, including factories, warehouses, establishments, and conveyances, in which persons registered or exempted from registration requirements under IC 35-48-3 are permitted to possess, manufacture, compound, process, sell, deliver, or otherwise dispose of a controlled substance.

(b) Issuance and execution of administrative inspection warrants must be as follows:

- (1) A judge of a court of record within the judge's jurisdiction may, upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter and seizures of property appropriate to the inspections.
- (2) For purposes of the issuance of administrative inspection

warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(3) A warrant shall be issued only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge, and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe the grounds exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected.

(4) The warrant must do the following:

(A) State the grounds for the warrant's issuance and the name of each person whose affidavit has been taken in support of the warrant.

(B) Be directed to a person authorized by section 1 of this chapter to execute the warrant.

(C) Command the person to whom the warrant is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(D) Identify the item or types of property to be seized, if any.

(E) Direct that the warrant may be served during normal business hours and designate the judge to whom the warrant shall be returned.

(5) A warrant issued under this section must be executed and returned within ten (10) days of the warrant's date unless, upon a showing of a need for additional time, the court orders otherwise.

(6) If property is seized under a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(7) The judge who issues a warrant shall attach to the warrant a copy of the return and all papers returnable in connection with the issuance of the warrant and file them with the clerk of the circuit or superior court for the judicial circuit in which the inspection was made.

(c) The Indiana board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) When authorized by an administrative inspection warrant issued under subsection (b), an officer or employee designated by the Indiana board of pharmacy, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(2) When authorized by an administrative inspection warrant, an officer or employee designated by the Indiana board of pharmacy may do the following:

(A) Inspect and copy records required by IC 35-48-3 to be kept.

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found on the premises, and, except as provided in subdivision (4), all other things on the premises, including records, files, papers, processes, controls, and facilities bearing on violation of laws relating to controlled substances.

(C) Inventory any stock of any controlled substance on the premises and obtain samples of the controlled substance.

(3) This section does not prevent an inspection without a warrant of books and records under an administrative subpoena issued in accordance with IC 4-21.5-3 or prevent entries and administrative inspections, including seizures of property, without a warrant if any of the following conditions exist:

(A) The owner, operator, or agent in charge of the controlled premises consents.

(B) A situation presents imminent danger to health or safety.

(C) A situation involves the inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant.

(D) An exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking.

(E) A situation in which a warrant is not constitutionally required.

(4) An inspection authorized by this section may not extend to financial data, sales data (other than shipment data), or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-3

Injunctions

Sec. 3. Any court of record has jurisdiction to restrain or enjoin violations of laws relating to controlled substances.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-4

Cooperative arrangements and confidentiality

Sec. 4. (a) The Indiana board of pharmacy shall cooperate with federal and other state agencies in discharging the board's

responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the board may do the following:

- (1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances.
- (2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local, state, and federal levels.
- (3) Cooperate with the Drug Enforcement Administration by establishing a centralized unit to accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within Indiana, and make the information available for federal, state, and local law enforcement purposes. The board may not furnish the name or identity of a patient or research subject whose identity cannot be obtained under subsection (c).
- (4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Drug Enforcement Administration relating to the regulatory functions of this chapter, including the results of inspections conducted by the Drug Enforcement Administration, may be relied on and acted upon by the Indiana board of pharmacy in the exercise of the board's regulatory functions.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the Indiana board of pharmacy. A practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-5

Forfeitures

Sec. 5. (a) The following are subject to forfeiture:

- (1) All controlled substances that are or have been unlawfully manufactured, distributed, dispensed, acquired, or possessed, or with respect to which there has been an act by a person in violation of laws relating to controlled substances.
- (2) All raw materials, instruments, devices, and other objects that are used or intended for use by the person in possession of them in unlawfully planting, growing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance.
- (3) All property that is used or intended for use by the person in possession of the property as a container for property described in subdivision (1) or (2).
- (4) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used or intended for use by the person in possession in violation of a law

relating to controlled substances.

(b) Property subject to forfeiture under this chapter may be seized by an enforcement officer upon process issued by any state court of record having jurisdiction over the property. Seizure without process may be made if any of the following conditions exist:

(1) The seizure is incident to an arrest, a search under a search warrant, or an inspection under an administrative inspection warrant.

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

(3) The Indiana board of pharmacy has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(4) The Indiana board of pharmacy has probable cause to believe that the property was used by the person in possession of the property or is intended to be used in violation of a law relating to controlled substances.

(c) In a seizure under subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section is not subject to replevin, but is considered to be in the custody of the Indiana board of pharmacy subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the Indiana board of pharmacy may do any of the following:

(1) Place the property under seal.

(2) Remove the property to a place designated by the board.

(3) Take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

All property seized under this chapter shall be retained by the Indiana board of pharmacy until all proceedings in which the property may be involved have concluded.

(e) When property is forfeited under this chapter, the Indiana board of pharmacy shall do the following:

(1) Sell property that by law is not required to be transferred or destroyed, that has a monetary value, and that is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. All proceeds in excess of expenses shall be paid into the common school fund of the state.

(2) Take custody of property that has no monetary value or cannot lawfully be sold and remove the property for disposition in accordance with administrative rule or forward the property to the Drug Enforcement Administration for disposition.

(f) Controlled substances listed in schedule I that are unlawfully possessed, transferred, sold, or offered for sale are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be

summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived that:

- (1) have been unlawfully planted or cultivated and the owners or cultivators are unknown; or
- (2) are wild growths;

may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the Indiana board of pharmacy or the board's authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that the person is the holder of the plants constitutes authority for the seizure and forfeiture of the plants.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-6

Burden of proof; liabilities

Sec. 6. (a) It is not necessary for the state to negate any exemption or exception in this chapter or in IC 35-48 in a complaint, an information, an indictment, or other pleading or in a trial, hearing, or other proceeding under this chapter or under IC 35-48. The burden of proof of an exemption or exception is on the person claiming the exemption or exception.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under IC 35-48-3, a person is presumed not to be the holder of the registration or form.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-7

Judicial review

Sec. 7. All final determinations, findings, and conclusions of the Indiana board of pharmacy under this chapter are conclusive decisions of the matters involved. A person aggrieved by the decision may obtain review of the decision in accordance with IC 4-21.5-5. Findings of fact by the Indiana board of pharmacy, if supported by substantial evidence, are conclusive.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-8

Education programs

Sec. 8. The addiction services bureau of the division of mental health and addiction shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs, the bureau may do the following:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations.
- (2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.

- (3) Consult with interested groups and organizations to aid the groups and organizations in solving administrative and organizational problems.
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances.
- (5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat the problems.
- (6) Assist in the education and training of state and local law enforcement officials in efforts to control misuse and abuse of controlled substances.

As added by P.L.2-1993, SEC.25. Amended by P.L.215-2001, SEC.86.

IC 16-42-20-9

Research

Sec. 9. The addiction services bureau of the division of mental health and addiction shall encourage research on misuse and abuse of controlled substances. In connection with the research and in furtherance of the enforcement of laws relating to controlled substances, the bureau may do the following:

- (1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse.
- (2) Make studies and undertake programs of research to do the following:
 - (A) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of laws relating to controlled substances.
 - (B) Determine patterns of misuse and abuse of controlled substances and the social effects of such behavior.
 - (C) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.
- (3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects that bear directly on misuse and abuse of controlled substances.

As added by P.L.2-1993, SEC.25. Amended by P.L.215-2001, SEC.87.

IC 16-42-20-10

Contracts for educational and research activities

Sec. 10. The addiction services bureau of the division of mental health and addiction may enter into contracts for educational and research activities without performance bonds.

As added by P.L.2-1993, SEC.25. Amended by P.L.215-2001, SEC.88.

IC 16-42-20-11

Anonymity of research subjects

Sec. 11. The Indiana board of pharmacy may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

As added by P.L.2-1993, SEC.25.

IC 16-42-20-12

Possession and distribution of controlled substances for research purposes

Sec. 12. The Indiana board of pharmacy may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

As added by P.L.2-1993, SEC.25.